

## CHAPTER 21 SURPLUS LINES REQUIREMENTS

[Prior to 10/22/86, Insurance Department[510]]

### **191—21.1(515) Definitions.**

**21.1(1)** “*Producer*” when used herein is defined to be that person who ultimately delivers the policy to the policyholder or the person who places the policy with the insurance company. The producer may be either a resident or nonresident of this state and must be licensed in Iowa to sell insurance classified as excess and surplus lines.

**21.1(2)** “*Surplus lines carrier*” when used herein is defined to be certain nonadmitted insurers qualified to provide surplus lines coverage as set out in Iowa Code section 515.147, but in no event shall the term include those insurers described in Iowa Code section 515.148.

### **191—21.2(515) Nonadmitted insurer’s duties.**

**21.2(1)** *Insurer liable.* Where, pursuant to section 515.147, coverage is placed with a nonadmitted insurer, such insurer shall be liable for the premium tax required by section 515.147.

**21.2(2)** *How premium tax quoted.* A nonadmitted insurer or broker therefor is authorized to quote a premium which includes tax as is required by section 515.147 and thereafter no additional tax amount may be charged or collected. Premium tax may be stated in the contract of insurance as a separate component of the total premium only when the premium is not based upon rates or premiums which included a premium tax component when promulgated. Policy fees collected from residents of this state are considered part of the premium and thus are subject to taxation.

### **191—21.3(515) Producers’ duties.**

**21.3(1)** *Producer collection of tax.* A licensed producer who procures or places insurance in nonadmitted insurers shall collect premium tax from the nonadmitted insurer by withholding 2 percent of the premiums for such tax.

**21.3(2)** *Affidavits required.* A producer who places insurance shall within 30 days subsequent to the date of delivery of a policy issued by a nonadmitted insurer cause to be filed with the commissioner of insurance a sworn statement on Form No. SL163A. In lieu of filing affidavits for each policy issued by a nonadmitted insurer, the producer may file a diskette with the commissioner on a monthly basis for multiple affidavit filings. The producer shall include with the diskette filed with the commissioner a sworn statement on Form No. SL163B. Copies of Form SL163A and Form SL163B are on file in the insurance division office and the division’s Web site, <http://www.state.ia.us/government/com/ins/ins.htm>.

**21.3(3)** *Annual report.* On or before March 1 of each year, every producer who has placed insurance in nonadmitted insurers during the preceding calendar year shall file with the commissioner of insurance a sworn report of all such business written during the preceding calendar year. Said report shall be accompanied by a remittance to cover the taxes due on said business and shall be filed on Form No. SL263. Failure to file said return or pay the taxes imposed by Iowa Code sections 515.147 et seq., will be deemed grounds for the revocation of producer’s license by the insurance division.

**191—21.4(515) Producers’ duty to insured; evidence of coverage.** Each producer placing coverage in nonadmitted insurers as defined herein shall deliver to the insured, within 30 days of the date of delivery of the policy, one of the following:

1. Language which states as follows: “This policy is issued, pursuant to Iowa Code section 515.147, by a nonadmitted company in Iowa and as such is not covered by the Iowa Insurance Guaranty Association.” Such requirement may be complied with by typing or stamping a verbatim copy of this language in a clear and conspicuous place on the policy;

2. A copy of the affidavit filed with the division.

**191—21.5(515) Procedures for qualification as a nonadmitted insurer.** Any insurer who wishes to qualify under Iowa Code section 515.147 as a nonadmitted insurer shall make an application. The application shall contain the following information:

1. A certificate of compliance from the state of domicile.
2. An executed power of attorney. This document shall be in a form which is found in the appendix to this chapter.
3. A biographical affidavit of directors and principal officers. This document shall be in a form which is found in the appendix to this chapter.
4. A copy of the insurer's annual statement for the last preceding calendar year. Applications received between November 1 and December 31 will not be examined until an annual statement for the current calendar year is available.
5. The insurer's most recent calendar year quarterly financial statement.
6. A certified copy of the most recent state of domicile examination report.
7. A current certified public accountant audit report.
8. A marketing plan of operation.
9. A designation of a licensed Iowa resident producer qualified to write excess and surplus lines insurance.
10. Remittance of a \$50 filing fee.

In addition to the above requirements, the insurer shall have minimum capital and surplus of \$5 million and have been actively in operation for at least three years without significant changes in ownership or management during the three-year period. These financial and management requirements may be waived by the commissioner upon a finding that the insurer will be offering coverage in a line of insurance for which there is an unavailability of capacity and an extraordinary need for coverage in this state. The commissioner may require other information as deemed necessary.

**191—21.6(515) Risk retention groups.** A risk retention group as defined in Iowa Code chapter 515E may utilize its producers to report and pay premium taxes or may pay the taxes directly. If producers are utilized, they shall follow the procedure set forth in subrule 21.3(2). In the event that the group desires to pay the premium tax directly, it shall file with the commissioner a sworn statement on Form No. SL264. A copy of Form SL264 is on file in the insurance division office.

Rules 21.1(515) to 21.6(515) are intended to implement Iowa Code sections 515.147 to 515.149.

[Filed 8/1/63]

[Filed 5/26/77, Notice 4/6/77—published 6/15/77, effective 7/20/77]

[Editorially transferred from [510] to [191], IAC Supp. 10/22/86; see IAB 7/30/86]

[Filed 6/22/90, Notice 5/16/90—published 7/11/90, effective 8/15/90]

[Filed 2/15/91, Notice 1/9/91—published 3/6/91, effective 4/10/91]

[Filed 10/10/91, Notice 9/4/91—published 10/30/91, effective 12/4/91]

[Filed 3/5/99, Notice 11/4/98—published 3/24/99, effective 4/28/99]

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That the \_\_\_\_\_  
a corporation organized and existing under the laws of the State of \_\_\_\_\_, and pursuant to a resolution passed by the Board of Directors of said corporation, on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, does hereby constitute and appoint the Commissioner of Insurance of the State of Iowa as its true and lawful attorney for it and in its name and stead, and does hereby authorize the said Commissioner of Insurance or his deputy for and on behalf of said corporation to accept and acknowledge service of notice or process of any kind, whether mesne or final, in any action or proceeding against said corporation, in any of the courts, State and Federal, in the said State of Iowa, and it is hereby admitted and agreed that such service made upon the Commissioner of Insurance of the State of Iowa or his deputy shall be taken and held to be as valid, binding and effective for all purposes as if served upon said corporation according to the laws and practice of said state or any other state, and every claim or right of error by reason of such acknowledgement or service is hereby expressly waived and relinquished, granting unto its said attorney full power and authority to do and perform every act and thing requisite and necessary or proper to be done in the premises, the said corporation hereby ratifying and confirming all that said attorney shall lawfully do or cause to be done by virtue hereof.

It is further resolved by said corporation that the Commissioner of Insurance of the State of Iowa or his deputy, shall forward such acknowledged copy of notice or process to the following designated person or corporation: \_\_\_\_\_ at the address of \_\_\_\_\_ in the city of \_\_\_\_\_ state of \_\_\_\_\_ zip code of \_\_\_\_\_, and it is hereby admitted and agreed that the forwarding to said designee shall be taken and held to be as valid, binding and effective for all purposes as if forwarded to said corporation.

IN WITNESS WHEREOF, the said \_\_\_\_\_  
has hereunto caused its corporate name to be signed by its president and its corporate seal to be affixed and attested by its secretary, all being done in the city of \_\_\_\_\_ state of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

(SEAL)

By \_\_\_\_\_  
PRESIDENT

ATTEST:

\_\_\_\_\_  
SECRETARY

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_ } ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, A.D., 19 \_\_\_\_\_, before me, a notary public in and for said county, personally appeared \_\_\_\_\_ and \_\_\_\_\_ to me personally known, who being by me duly sworn did say that they are \_\_\_\_\_ and \_\_\_\_\_ respectively of said corporation, that the seal affixed to said instrument is the seal of said corporation and that said instrument was signed and sealed on behalf of the said corporation by authority of its Board of Directors, and the said \_\_\_\_\_ and \_\_\_\_\_ acknowledged the execution of said instrument to be the voluntary act and deed of said corporation by it voluntarily executed.

My commission expires: \_\_\_\_\_  
\_\_\_\_\_  
NOTARY PUBLIC

## COPY OF RESOLUTION

I, \_\_\_\_\_  
 Secretary of the \_\_\_\_\_  
 a corporation existing under the laws of the State of \_\_\_\_\_, do hereby certify that the following is a true and correct copy, from the corporate records of said corporation, of a resolution duly adopted by the governing body thereof, at an annual or special meeting of said body, a quorum thereof present and acting, on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, to wit:

“Resolved that the President or Vice President, and Secretary or Assistant Secretary of this corporation be and they are hereby authorized and directed to execute to the Commissioner of Insurance of the State of Iowa, a Power of Attorney, substantially as follows:

KNOW ALL MEN BY THESE PRESENTS:

That the \_\_\_\_\_  
 a corporation organized and existing under the laws of the State of \_\_\_\_\_, and pursuant to a resolution passed by the Board of Directors of said corporation, on the \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_, does hereby constitute and appoint the Commissioner of Insurance of the State of Iowa as its true and lawful attorney for it and in its name and stead, and does hereby authorize the said Commissioner of Insurance or his deputy for and on behalf of said corporation to accept and acknowledge service of notice or process of any kind, whether mesne or final, in any action or proceeding against said corporation, in any of the courts, State and Federal, in the said State of Iowa, and it is hereby admitted and agreed that such service made upon the Commissioner of Insurance of the State of Iowa or his deputy shall be taken and held to be as valid, binding and effective for all purposes as if served upon said corporation according to the laws and practice of said state or any other state, and every claim or right of error by reason of such acknowledgement or service is hereby expressly waived and relinquished, granting unto its said attorney full power and authority to do and perform every act and thing requisite and necessary or proper to be done in the premises, the said corporation hereby ratifying and confirming all that said attorney shall lawfully do or cause to be done by virtue hereof.

It is further resolved by said corporation that the Commissioner of Insurance of the State of Iowa or his deputy, shall forward such acknowledged copy of notice or process to the following designated person or corporation: \_\_\_\_\_  
 \_\_\_\_\_ at the address of \_\_\_\_\_ in the city of \_\_\_\_\_  
 state of \_\_\_\_\_, and it is hereby admitted and agreed that the forwarding to said designee shall be taken and held to be as valid, binding and effective for all purposes as if forwarding to said corporation.”

And I do further certify that the said resolution has never been rescinded or reconsidered and still remains in force.

**GIVEN AND CERTIFIED**, at the principal office of said corporation, city of \_\_\_\_\_  
 State of \_\_\_\_\_, with the corporate seal thereof hereto affixed by the undersigned, having custody of the same as Secretary of said corporation, this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_\_.

\_\_\_\_\_  
 SECRETARY

BIOGRAPHICAL AFFIDAVIT  
(Print or Type)

Full Name and Address of Company (Do Not Use Group Names). \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In connection with the above-named company, I herewith make representations and supply information about myself as hereinafter set forth. (Attach addendum or separate sheet if space hereon is insufficient to answer any question fully.) IF ANSWER IS “NO” OR “NONE”, SO STATE.

1. Affiant’s Full Name (Initials Not Acceptable). \_\_\_\_\_  
\_\_\_\_\_
2. a. Have you ever had your name changed? \_\_\_\_\_ If yes, give the reason for the change. \_\_\_\_\_  
\_\_\_\_\_
- b. Other names used at any time. \_\_\_\_\_  
\_\_\_\_\_
3. Affiant’s Social Security Number. \_\_\_\_\_
4. Date and Place of Birth. \_\_\_\_\_  
\_\_\_\_\_
5. Affiant’s Business Address. \_\_\_\_\_  
Business Telephone. \_\_\_\_\_
6. List your residences for the last ten (10) years starting with your current address, giving:  

DATEADDRESSCITY and STATE

  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. Education: Dates, Names, Locations and Degrees.  
College \_\_\_\_\_  
\_\_\_\_\_  
Graduate Studies \_\_\_\_\_  
\_\_\_\_\_  
Others \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
8. List memberships in Professional Societies and Associations. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. Present or Proposed Position with the Applicant Company. \_\_\_\_\_  
\_\_\_\_\_

10. List complete employment record (up to and including present jobs, positions, directorates or officerships) for the past twenty (20) years, giving:

<u>DATES</u>	<u>EMPLOYER AND ADDRESS</u>	<u>TITLE</u>

11. Present employer may be contacted. Yes No (Circle One)  
Former employers may be contacted. Yes No (Circle One)

12. a. Have you ever been in a position which required a fidelity bond? \_\_\_\_\_  
If any claims were made on the bond, give details. \_\_\_\_\_

b. Have you ever been denied an individual or position schedule fidelity bond, or had a bond cancelled or revoked? \_\_\_\_\_ If yes, give details. \_\_\_\_\_

13. List any professional, occupational, and vocational licenses issued by any public or governmental licensing agency or regulatory authority which you presently hold or have held in the past (state date license issued, issuer of license, date terminated, reason for termination). \_\_\_\_\_

14. During the last ten (10) years, have you ever been refused a professional, occupational, or vocational license by any public or governmental licensing agency or regulatory authority, or has any such license held by you ever been suspended or revoked? \_\_\_\_\_ If yes, give details. \_\_\_\_\_

15. List any insurers in which you control directly or indirectly or own legally or beneficially 10% or more of the outstanding stock (in voting power). \_\_\_\_\_

If any of the stock is pledged or hypothecated in any way, give details. \_\_\_\_\_

16. Will you or members of your immediate family subscribe to or own, beneficially or of record, shares of stock of the applicant insurance company or its affiliates? \_\_\_\_\_

If any of the shares of stock are pledged or hypothecated in any way, give details. \_\_\_\_\_

17. Have you ever been adjudged a bankrupt? \_\_\_\_\_

18. a. Have you ever been convicted or had a sentence imposed or suspended or had pronouncement of a sentence suspended or been pardoned for conviction of or pleaded guilty or nolo contendere to an information or indictment charging any felony, or charging a misdemeanor involving embezzlement, theft, larceny, or mail fraud, or charging a violation of any corporate securities statute or any insurance law, or have you been the subject of any disciplinary proceedings of any federal or state regulatory agency? \_\_\_\_\_

If yes, give details. \_\_\_\_\_

- b. Has any company been so charged, allegedly as a result of any action or conduct on your part? \_\_\_\_\_ If yes, give details. \_\_\_\_\_  
\_\_\_\_\_
19. Have you ever been an officer, director, trustee, investment committee member, key employee, or controlling stockholder of any insurer which, while you occupied any such position or capacity with respect to it, became insolvent or was placed under supervision or in receivership, rehabilitation, liquidation or conservatorship? \_\_\_\_\_
20. Has the certificate of authority or license to do business of any insurance company of which you were an officer or director or key management person ever been suspended or revoked while you occupied such position? \_\_\_\_\_ If yes, give details. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated and signed this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_  
\_\_\_\_\_. I hereby certify under penalty of perjury that I am acting on my own behalf, and that the foregoing statements are true and correct to the best of my knowledge and belief.

\_\_\_\_\_  
(Signature of Affiant)

State of \_\_\_\_\_

County of \_\_\_\_\_

Personally appeared before me the above named \_\_\_\_\_,  
personally known to me, who, being duly sworn, deposes and says that he executed the above instrument and that the statements and answers contained therein are true and correct to the best of his knowledge and belief.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
19 \_\_\_\_\_.

(SEAL)

\_\_\_\_\_  
Notary Public

My Commission Expires \_\_\_\_\_